

Court No.1.

Criminal Revision No. 31 of 2001

Uri Dutta Nautiyal Revisionist.

Versus

State of Uttaranchal and others Opp.parties.

Hon'ble P.C. Verma, J.

This revision has been filed against the order dated 10-4-2001, passed in criminal appeal No. nil of 2001 which reads as under;-

"Admit the appeal.

Subject to the deposit of the bank guarantee for Rs. 1,50,000/ within 15 days, the sentence shall remain suspended and the period of three month's imprisonment shall also remain suspended. Call for the record of the lower court fixing 22.5.2001 for arguments.

Application for bail:- Subject to the furnishing of the bank guarantee as stated above, the accused be admitted on bail on his executing a personal bond in the sum of Rs. 25,000/ and two sureties each in the like amount in this court."

The appellant was convicted under Section 138 of Negotiable Instrument Act for a period of three months and a fine of Rs. 1,50,000/ was also imposed. This fine was to be paid to the complainant as compensation. This court while considering the propriety of the inter-locutory order quoted above against which this revision has been filed found that the District Judge has not suspended the realization of fine only released the appellant on bail on his furnishing sureties.

The grievance of the revisionist is that the fine should have been suspended as it was liable to be suspended in view of section 357 (2) of the Code of

Criminal Procedure, which reads as under-

357 (2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented before the decision of the appeal.

The learned District Judge did not notice the provisions of section 357 (2) of the Cr.P.C. which clearly bars the payment of fine in case an appeal is filed against the judgment and order by which fine is imposed before the decision of the appeal. Thus the part of the order of the District Judge to the extent it directs to deposit the petitioner bank guarantee of Rs. 1,50,000/- within 15 days is concerned is contrary to the provisions of the Code of Criminal Procedure. That part is set aside.

The revision is allowed accordingly. The appellate court is directed to decide the appeal within a period of three months from the date of production of a certified copy of this order. However, any observation made here in above shall not effect the trial of the appeal.

(P.C. Verma, J.)

R.P.Singh
25/5/2001.